



Costs Decision

Site visit made on 18 September 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 15 November 2017

Costs application in relation to Appeal Ref: APP/H1840/W/17/3176897 Land off Church Road, Bradley Green, Worcestershire B96 6SN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr JR Evans for a full award of costs against Wychavon District Council.
 - The appeal was against the refusal of planning permission for an outline application with all matters reserved apart from access, for the construction of a live/work unit.
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Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.¹
3. The application for costs alleges that the Council behaved unreasonably by preventing development which should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations.
4. The Council took the view that the proposal did not accord with the South Worcestershire Development Plan (SWDP).² It considered that the proposal conflicted with policy SWDP 4 because the site was remote from services and facilities and lacking in genuinely sustainable transport choices which would result in reliance on the private motor car. Although, in the specific circumstances, I took a different view from the Council regarding the applicability of that policy and the weight to be given to conflict with it, I consider that it was an arguable position as there is a tension between the respective development plan policies which could be said to pull in opposite directions.
5. The applicant further submits that the Council disregarded or failed to acknowledge relevant sections of development plan policies SWDP 2 and SWDP 8, which specifically dealt with live/work units. However, both policies are specifically referred to in the Council's decision notice, Officer's 'Planning Committee Report' and in its appeal statement.

¹ Paragraph: 030 Reference ID: 16-030-20140306

² Adopted February 2016

6. The 'Committee Report' assessing the proposal refers to the exceptions, contained in SWDP 2 part C, to the strict control on development in the open countryside. It also goes through the criteria contained in part G of policy SWDP 8 which deals with live/work units. Therefore, I disagree with the contention that the Council disregarded or failed to acknowledge the relevant aspects of those policies. The crux of the disagreement between the parties was the applicability and weight to be given to policy SWDP 4 and locational sustainability in relation to a live/work unit application. That dispute is more fully discussed in the main appeal decision.
7. I note the applicant's views on the interpretation of the SWDP and the weight to be given to commuting travel in relation to policy SWDP 4. However, given that the proposal had to be assessed against the development plan as a whole and the interrelationship between its policies and strategy considered, I do not agree that those matters were beyond reasonable debate or dispute.
8. In relation to proactive working with applicants with a view to mitigating adverse effects, it is difficult to see how the issue of locational sustainability which the Council saw as critical could have been addressed by further discussion with the applicant.
9. The applicant also alleges that the Council has acted inconsistently in approving another planning application for a live/work unit in similar circumstances. The Council contends that there were differences between that scheme and the appeal proposal, in terms of relevant planning history. Whilst I gave the matter moderate weight in reaching my decision in the main appeal, it is legitimate to consider each case on its merits and the fact that the Council may have arrived at a different conclusion in one other case does not in itself necessarily amount to unreasonable behaviour. I also note that the Council submits that it has refused other applications for live/work units on similar grounds to the appeal.
10. It is also suggested the applicant that the Council did not carry out an appropriate balancing exercise in reaching its decision. However, the 'Planning Committee Report' does include a specific section headed 'Planning Balance and Conclusions' which comprises an assessment and weighting of aspects in favour and against the proposal. Therefore, the Council did carry out a balancing exercise, although it reached a different conclusion from the applicant.
11. Overall therefore, whilst I ultimately took a different view from the Council, I am not persuaded that the Council has acted unreasonably.

Conclusion

12. I therefore find, for the reasons set out above, that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, no award is made.

Jonathan Tudor

INSPECTOR